

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

APPLICATION NO.: 09/853,428 : FILING DATE: May 10, 2001

ART UNIT: 3739 : EXAMINER: Gibson, Roy Dean

FIRST NAMED INVENTOR: Brainard

TITLE: Photoreceptor System for Melatonin Regulation and Phototherapy

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**Commissioner for Patents  
Alexandria, VA 22313**

**THIRD SUPPLEMENTAL RESPONSE TO OFFICE ACTION MAILED ON  
APRIL 30, 2009, RESPONSE TO ADVISORY ACTION MAILED ON AUGUST  
24, 2009, AND CLAIM AMENDMENTS**

Sir:

Applicants filed a response on June 30, 2009, July 24, 2009 and July 30, 2009 to Examiner's rejection of claims 2, 12, 14, 31 - 32, and 34 - 46. It is Applicants' understanding that none of Applicants' amendments that were filed on June 30, 2009, July 24, 2009 or July 30, 2009 has been entered, and the following response and claim listing is submitted in place of the responses that were filed on June 30, 2009, July 24, 2009 and July 30, 2009.

**I. AUGUST 24, 2009 ADVISORY ACTION**

Applicants note Examiner's comment in the Advisory Action of August 24, 2009 regarding claim 31 which stated: "However, after further consideration of the support for all the language of the independent claim 31, it was noted by the examiner that the word "neurobehavioral" did not appear in the Specification and, therefore, was not an appropriate antecedent as required by MPEP 608.01(o)". Applicants disagree with the

Examiner's contention that the word "neurobehavioral" does not have appropriate antecedent basis, however without prejudice for reasons of expediency and not for reasons of patentability, Applicants herein amend claim 31 to include the following: "stimulating the photoreceptor system for at least one of the circadian, photoneural, or neuroendocrine ~~or neurobehavioral~~ systems of said at least one mammal". Applicants may intend to resubmit the word "neurobehavioral" in at least one claim in a continuation application to be filed during the pendency of the current application or, in a series of co-pending applications, during the pendency of at least one application that claims this application as its parent application or that claims the same parent application that is claimable by this application.

## **II. CLAIM REJECTIONS – 35 USC § 102**

In response to Examiner's rejection of claims 31, 34, 35, 37 - 41 and 44, which were rejected, in the office action mailed on April 30, 2009, under 35 U.S.C. § 102(b), Applicants amend claim 31 to include the following: "causing said optical radiation to be commonly therapeutically effective in humans by employing a pre-established spectral composition that has been pre-identified as a maximally potent spectral composition in the regulation of at least one of the human circadian, photoneural, or neuroendocrine systems, said pre-established spectral composition comprising at least one enhanced spectral region comprising at least one peak of emitted light within the range of 435-488 nm". Applicants note that the present invention teaches causing optical radiation to be commonly therapeutically effective in humans by employing a pre-established spectral composition that has been pre-identified as a maximally potent spectral composition in the regulation of human circadian physiology. In contrast, Searfoss et al. (5,265,598),

among other differences teaches employing a spectral composition that is individually determined based on subjective response of the specific human being treated.

Applicants further note that claims 34, 35, 37 - 41, and 44 now depend from allowable claims.

Claims 35 and 37 - 38 now depend from allowable claims. It is noted that Searfoss et al. (5,265,598) does not teach a blue light filter or the 435 – 488 nm waveband. The only color Searfoss et al. (5,265,598) specifically identifies is “green” which is mentioned three times in the claims, once in the Summary and once in the Description. Searfoss et al. (5,265,598) identify no other colors in their application. Sakamoto et al. (5,648,653) does not teach a method of at least treating or preventing at least one light responsive disorder in at least one mammal.

Applicants cancel the following claims without prejudice for reasons of expediency and not for reasons of patentability; which Applicants may intend to resubmit in a continuation application to be filed during the pendency of the current application or, in a series of co-pending applications, during the pendency of at least one application that claims this application as its parent application or that claims the same parent application that is claimable by this application: 2, 12, 14, 32, 36, 42, 43, 45 and 46.

In addition, to put the application in better form for allowance, applicants currently cancel the following previously withdrawn claims without prejudice for reasons of expediency and not for reasons of patentability; which Applicants may intend to resubmit in a continuation application to be filed during the pendency of the current application or, in a series of co-pending applications, during the pendency of at least one

application that claims this application as its parent application or that claims the same parent application that is claimable by this application: 28 - 30, 33, and 47 - 56.

Claim 57 was added as a "new" claim in the amendment filed on June 30, 2009, however, the amendments filed on June 30, 2009 have not been entered and claim 57 is now listed as "not entered". Claim 57 is currently not submitted as a "new" claim for reasons of expediency and not for reasons of patentability; and Applicants may intend to resubmit claim 57 as a new claim in a continuation application to be filed during the pendency of the current application or, in a series of co-pending applications, during the pendency of at least one application that claims this application as its parent application or that claims the same parent application that is claimable by this application.

### **III. AMENDMENTS TO THE CLAIMS**

This listing of claims will replace all prior versions, and listings, of claims in the application. Amend the claims as follows: